

No. 10273

IN THE

United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

JOSEPH T. MARZO,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLANT'S OPENING BRIEF.

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APPELLANT'S OPENING BRIEF.

This is an appeal from a judgment of conviction of violation of the Mann Act. The appellant was indicted by a grand jury, consisting entirely of all men [R. 82], and on the panel for the selection of which there have been the names of no women for seven years [R. 82], women being systematically excluded from the grand jury.

A motion to quash the indictment on the ground that the grand jury which returned the indictment was not a grand jury selected in the usual mode of selecting grand juries in the State of California, and therefore did not conform to the provisions of Section 411, Title 28 U. S. C. A. was made and denied and exception taken. [R. 96, 97.]

The following proceedings were had in connection with the motion to quash the indictment:

“The Court: State that objection now.

Mr. Lavine: That the Grand Jury which was selected, and it may require some evidence unless we can stipulate as to the facts, was composed entirely of men, and does not conform to the provisions of Section 411, Title 28.

Mr. Neukom: I will stipulate it was all men.

Mr. Lavine: Will you further stipulate that there have been no women on the Grand Jury panel in the last two years?

Mr. Neukom: Not in the seven years I have been here.

Mr. Lavine: So that for a period of seven years there have been no women.

The Court: Which in my judgment is wholly immaterial. That is this Grand Jury you are talking about, Mr. Lavine?

Mr. Lavine: Yes, and that there have been no names of women in the panel itself. You will so stipulate?

Mr. Neukom: Yes, and not on the petit jury.

Mr. Lavine: I will accept the stipulation.

The Court: Very well, that is the stipulation as to that.

Mr. Lavine: Now, then, I move to quash the indictment on the ground it was returned by a Grand Jury composed not in accordance with the composition of grand juries as provided by Title 28, Section 411, U. S. Codes Annotated, which requires that jurors in a Federal court, and grand juries be composed in the same manner as they are in the State courts in which the courts are located, and I think

you will stipulate, Mr. Neukom, that there are women selected on the grand juries and the state courts of the State of California, and there are women selected on the petit juries.

Mr. Neukom: I will, and your Honor takes judicial notice of it." [R. 82-83.]

The appellant presents this sole point on appeal and abandons all other assignments of error:

The District Court Erred in Overruling the Objections to the Manner of Selecting the Grand Jury, and in Holding That Such Grand Jury Was Constituted in Accordance With the Practice of the State of California, When Women Were Excluded Therefrom.

Section 411, Title 28 U. S. C. A. is clear and mandatory upon the Southern District of California, Central Division. For years there has been a selective selection of grand jurors of the federal courts in which half of the population, the female sex, has been excluded in the federal courts, but not in the state courts. The prosecutor stipulated to seven years during which he had been in the office, as having no women on the federal grand jury. It was further stipulated that the county grand jury of Los Angeles county has had women selected during those years.

The grand jury which returned this indictment was therefore not legally constituted in accordance with the usual mode prevailing in the State of California.

The old time prejudice against women in public life and public service still prevails in the Southern District of California, Central Division. This concept has outlived

its usefulness. Women today are in the army, navy, and marine corps. They occupy position of danger and risk their lives along with the men, whenever and wherever necessary.

Shall they be systematically excluded from grand juries in the federal courts when their rights and abilities and usefulness on county grand juries in this state have been progressively recognized for years?

Such exclusion, it is respectfully submitted, vitiates the proceedings from which the indictment emanated and to which objection was duly and regularly taken and exception noted.

Title 28, Section 411, U. S. C. A.;

Glasser v. U. S., 86 L. Ed. 680, 696;

Code of Civil Procedure of California, Section 204, providing that jury lists shall be made up of “* * * men and women suitable and competent to serve as jurors * * *.”

Wherefore appellant prays for reversal of the judgment and an order dismissing the indictment.

Respectfully submitted,

MORRIS LAVINE,

Attorney for Appellant.